

1 say January 1, 1995 until the end of April of '95, that any
2 of the buildings that Liberty had activated in that period
3 were being petitioned against by Time Warner?

4 A No.

5 Q Did you know at that -- during that period of time
6 that any of the paths were unauthorized?

7 A No.

8 Q Now when you -- there did come a point in which
9 you did learn that Liberty had unauthorized paths?

10 A Yes.

11 Q When did you learn that fact?

12 A Well we -- I think Tony -- I think no excuse me,
13 Peter told me that he thought we had unauthorized paths and
14 I found out -- we were able to confirm it through the
15 internal investigation.

16 Q But I asked you a different question. I asked a
17 question of when you learned. If you can fix a time?

18 A Well, the problem was when -- when we were told,
19 when I was told that -- that, you know, we might be
20 operating paths that were illegal I didn't really believe
21 it.

22 Q Okay.

23 A And so that there -- there is a time frame in
24 between when we were told that we may have paths that are
25 illegal and the time when I really believed that we had done

1 something that stupid.

2 Q When did you -- when did you first get information
3 which raised the possibility that the -- that Liberty might
4 have unauthorized paths?

5 A At the end of April, I think it was.

6 Q Now was this before or after you learned of the
7 emission designator problem?

8 A After.

9 Q Can you tell me about how many, about what the
10 time period was between learning of the emission designator
11 problem and -- and learning of the possibility that Liberty
12 may have unauthorized paths?

13 A Within a couple of days.

14 Q And -- just what you said before. And -- who
15 informed you of the fact that -- of the possibility there
16 may be unauthorized paths?

17 A Peter.

18 Q That's Peter Price?

19 A Yes.

20 Q And what was your reaction?

21 A Well, I didn't really believe we had licenses that
22 we had turned on installations without licenses. And that
23 we had, -- I figured we had either lost the things in the
24 file or that the information we were getting was just flawed
25 and so my brother started an internal investigation

1 immediately.

2 Q When you say your brother started an internal
3 investigation immediately, with whom -- who was directed, if
4 anyone, to perform this internal investigation?

5 A Lloyd Constantine.

6 Q Did you discuss this -- this possibility of
7 unauthorized transmissions with your brother?

8 A I'm sure we talked about it.

9 Q Okay. And did you have -- did you have an
10 intention with regard to the information to be gotten in the
11 -- in the internal investigation as to what to do with that
12 information?

13 A Well, we had to find out whether or not it was
14 true that we had turned things on. And in the even that we
15 had turned things on without authorization, we had to
16 immediately disclose it to the FCC.

17 Q Was this your understanding in April of 1995?

18 A I don't understand the question.

19 Q Was this what -- was this your intention in April
20 of '95?

21 A Yes.

22 Q I mean to your understanding, was this your
23 brother's intention in April of '95?

24 A Yes.

25 MR. HOLT: Objection. Leading.

1 JUDGE SIPPEL: I'll overrule that objection. Go
2 ahead.

3 BY MR. BEGLEITER:

4 Q Okay. Now after learning of this -- of this -- of
5 this problem, were any steps made to avoid its reoccurrence?

6 A Absolutely.

7 Q What steps were taken?

8 A A compliance program was put in place that
9 involved the people who formerly were not part of the
10 process. And made sure that at no point would a -- a path
11 ever be turned on before a license was received and in
12 someone's hand I think, who was a lawyer.

13 Q Sir, did you ever encourage anyone at Liberty to
14 activate a path without authorization?

15 A No. And I never would.

16 Q Were you ever present when anyone encouraged else
17 anyone at Liberty?

18 A No.

19 Q Let me finish the question. To activate an
20 unauthorized path?

21 A No.

22 Q Sir, one final question. Again, do you -- before
23 April of '95, did you have any suspicion that any of your
24 paths were unauthorized?

25 A No.

1 Q That's it.

2 JUDGE SIPPEL: All right. Cross examine. Mr.

3 Beckner, are you going to go first?

4 CROSS EXAMINATION

5 BY MR. BECKNER:

6 Q All right Mr. Milstein, as you may recall, in a
7 previous deposition, my name is Bruce Beckner. I represent
8 Time Warner Cable of New York City. Pardon me. Do you
9 recall any of your testimony that you gave in your
10 deposition that was in this case, Mr. Milstein?

11 A Do I recall it?

12 Q Yes.

13 A I've since read some of it.

14 Q Oh, okay. Let me ask you if you recall this
15 particular series of questions and answers.

16 "Question: Now did there come a time when you
17 became aware of the fact that Liberty had some
18 microwave paths in operation for which it would
19 not have FCC licenses or other grants of
20 authority?

21 A: Yes.

22 Q: When did you first have that awareness? Mr.
23 Spitzer asked for a clarification. The first time
24 he had the awareness.

25 And your answer: When Time Warner made the filing

1 with the FCC.

2 Q: Did someone bring this filing to your
3 attention?

4 A: I became aware of it in some conversation
5 either I was part of or overheard.

6 Q: When you became aware of this problem by Time
7 Warner, what action if any did you take? And Mr.
8 Spitzer asked for a clarification that the
9 question be restated.

10 Q: And became aware of the claim in the filing
11 that Liberty had unlicensed activated microwave
12 paths.

13 A: I don't know that I did anything personally.
14 My brother instituted immediately an internal
15 investigation to look into the claims and the
16 filing and we did an in depth analysis of it. And
17 that's how I became aware of it."

18 Do you recall those series of questions and
19 answers?

20 A Yes.

21 Q And just for the record, Your Honor, that's at
22 pages 41 and 42 of Mr. Milstein's deposition taken May 30,
23 1996.

24 JUDGE SIPPEL: That's in evidence as one of your
25 exhibits I think, isn't it?

1 MR. BECKNER: Yes, I think we offered that.

2 JUDGE SIPPEL: All right, go ahead.

3 MR. WEBER: Your Honor, I don't think this has
4 been admitted, but it is part of the Bureau Liberty's joint
5 motion for summary decision. The -- Mr. Ed Milstein's
6 deposition should have submitted with that. But I don't
7 think it's been admitted as an exhibit to this in any
8 hearing.

9 MR. BECKNER: Well, Your Honor, I don't have the
10 copies made at this time. I will have copies made by
11 tomorrow.

12 JUDGE SIPPEL: All right. I think it makes sense
13 -- I think it makes sense to have the whole transcript in
14 evidence.

15 MR. BECKNER: Right.

16 MR. WEBER: We have no objection, Your Honor.

17 JUDGE SIPPEL: Thank you. All right. Go ahead,
18 you may proceed.

19 BY MR. BECKNER:

20 Q Does the witness have the exhibit books up in
21 front of him, sir?

22 JUDGE SIPPEL: He does. A copy of your -- a set
23 of yours -- which ones do you want? Liberty's or his?

24 MR. BECKNER: The Time Warner Cablevision books.

25 JUDGE SIPPEL: All right that's -- this one right

1 here Mr. Milstein.

2 BY MR. BECKNER:

3 Q Okay I want you to take a look, sir at what's been
4 marked as Exhibit 35.

5 JUDGE SIPPEL: These are tabs.

6 Q And there are tabs in the book that should
7 identify the exhibits.

8 WITNESS: I think mine goes up to 34.

9 JUDGE SIPPEL: Is there anything in the beginning
10 of the book -- are there any tabs there?

11 WITNESS: Yes.

12 JUDGE SIPPEL: You got them? Okay.

13 BY MR. BECKNER:

14 Q Now, Mr. Milstein if you just look at Exhibit 35,
15 which is I think the first two pages of that package that
16 you have there.

17 A Okay.

18 Q It's a -- it's a memorandum addressed to you dated
19 April 26, 1995.

20 A Mm-hmm.

21 JUDGE SIPPEL: You have to answer yes or no.

22 THE WITNESS: Yes.

23 BY MR. BECKNER:

24 Q Do you recall receiving the memorandum that's been
25 marked as Exhibit 35 in Court today?

1 A Not specifically, but I'm sure if it was addressed
2 to me, I did receive it.

3 Q The first page of the memorandum refers to a phone
4 conversation and -- and I want to know if you can tell us
5 whether or not you recall the phone conversation preceding
6 the memorandum apparently about emission designator change?

7 A Well, I think that what happened was that Tony
8 told me about that a problem of getting licenses relative to
9 emission designators. I asked him for an explanation of it.
10 Whether he didn't get it to me quickly enough, or I just
11 hadn't gotten a response, I probably called Behrooz directly
12 and this was my response.

13 Q Do you recall whether or not after the -- after
14 the phone conversation you might have had with Tony that --
15 that Mr. Tony Ontiveros and Behrooz Nourain came to your
16 offices for a meeting to discuss the problem?

17 A No I don't recall that.

18 Q You don't recall anything like that?

19 A No.

20 Q Okay. Now with reference to the memorandum itself
21 that's Exhibit 35 that you're looking, do you recall
22 discussing that with -- with Mr. Nourain?

23 A No.

24 Q Do you recall discussing it with Tony Ontiveros?

25 A No.

1 Q Peter Price?

2 A No. When I got it, I'm sure I just gave it to
3 Peter.

4 Q I'm sorry?

5 A I'm sure when I got it, I just gave it to Peter.

6 Q Okay.

7 A Because Peter would follow up on these kind of
8 issues.

9 Q Now in the second paragraph is a -- is a statement
10 there. In order to be able to turn on our current
11 customers, the special temporary authority is being filed by
12 our FCC attorney. Did you understand that when Mr. Nourain
13 was referring to current customers, he was referring to
14 customers who already were receiving service?

15 A No.

16 Q What understanding did you have about the current
17 customers?

18 A This was a list of licenses that were being held
19 up because of emission designator problems.

20 Q And did you know that any of these buildings were
21 already being served by Liberty?

22 A No.

23 Q Didn't know any -- none of them were familiar to
24 you?

25 A I don't know that I really looked at the list at

1 the time.

2 Q Well, did Mr. Nourain or Mr. Ontiveros indicate
3 any concern out of the ordinary about this situation that
4 was described in the memorandum you're looking at?

5 A No not that I recall.

6 Q Do you recall whether or not your brother, Howard
7 Milstein was in town during the week that includes the date
8 of this memorandum that is April 26th?

9 A No I don't recall.

10 Q You don't recall discussing this memorandum with
11 him?

12 A No.

13 Q Do you recall participating in any telephone
14 conversations with Mr. Price and the company's lawyers
15 either on April 26th or the next two days after that?

16 A No. We have lots of phone conversations. If I
17 was part of a conversation, I wasn't leading the
18 conversation. I may have been -- if I was there and
19 available, I might have listened to the conversation but I
20 don't recall a specific conversation, any specific
21 conversations about this.

22 Q I would like you to take a look at Exhibit 34
23 which I guess is the last one in the book that you have.
24 And I'd like you to tell us if you can, whether or not you
25 recall looking at that document on or around April 28th

1 1995?

2 A I don't recall looking at it then. I have since
3 seen it in the last week. So I have read it. But I don't
4 recall at the time before seeing it, I had never seen it. I
5 don't recall seeing it.

6 Q Okay. And I take it you don't recall whether or
7 not Behrooz Nourain routed you and Tony Ontiveros a copy of
8 Exhibit 34?

9 A No I mean I may -- I may have gotten copies. I
10 get I don't know probably 50 to 100 documents every day.
11 Some of which I read, some of which I don't.

12 Q And as far as you know, you don't remember reading
13 this one? Exhibit 34?

14 A No. Not at the time.

15 Q All right. The third paragraph of the memorandum
16 Mr. Lehmkuhl talks about the possibility of getting special
17 temporary authority and he uses the term seriousness of the
18 situation. Can you recall at the time of the date of this
19 memorandum having a belief in your own mind as to whether or
20 not there was any kind of serious situation involving
21 Liberty's FCC licenses?

22 A No I don't -- I really don't recall. Because I
23 don't know when -- I don't know relative to the events of
24 the -- of those times when this memo arrived, if it arrived.

25 Q Did you have kind of a -- at that time -- did you

1 have any kind of a standard that you went by in terms of
2 what was important to read at the time you received and what
3 wasn't?

4 A No. Well, what would happen is I get mail all day
5 long. And so sometimes I put things in my bag to take home
6 for over the weekend. Sometimes I'll read them there if I
7 have time during the day. We have meetings, we have seven
8 or eight meetings every day.

9 Occasionally what happens is I'll take it with me
10 for the weekend, I will never get to the package because of
11 other things that are going on over the weekend and then we
12 get back to the next week and we started. And, you know, if
13 it was something that would have come up from the package
14 over the weekend, if it's a big enough issue, it will come
15 up again.

16 But it's not necessarily something where I would
17 require myself to read it. If it's something that is an
18 important issue, it will come up.

19 Q Somebody will let you know, in time for you to act
20 on it?

21 A Absolutely.

22 Q Even if you miss it when you first see it?

23 A Right.

24 Q Do you recall whether or not after you testified -
25 - strike that. When you testified in your direct that --

1 that you had been informed that there was this emission
2 designator problem correct?

3 A Right.

4 Q Okay. When you were told about that, was that
5 problem described to you as something that was serious or
6 just minor?

7 A I was told that we had had to refile and that our
8 licenses had been delayed. And, you know, the way of
9 licenses was an issue. But it was part of the business. If
10 you got delayed, you got delayed.

11 Q In that conversation or in any later conversation
12 did you ask whether or not the delay of the licenses that
13 you learned about was going to have an effect on Liberty's
14 provision of service to buildings?

15 A No I knew that in the event that we had delay of
16 getting licenses, it would -- it would delay delivering
17 service. Although, subsequent to that we've now learned
18 that some overzealous employees decided to initiate service
19 prior to getting licenses. I can't say that you know.

20 Q Did Mr. Nourain indicate or Mr. Ontiveros indicate
21 to you that either of them were concerned about being able
22 to meet time tables for initiation of service?

23 A Not -- I don't recall it right now.

24 Q Now on your direct testimony you mentioned the
25 fact that -- that Liberty began applying for microwave paths

1 to cover buildings that were already being served by
2 hardwire and which was initiated before the New York Cable
3 Commission? Correct?

4 A Correct.

5 Q All right. Is it not the case that the filings
6 that Liberty made for those hardwire buildings were also
7 made in conjunction with filings for new buildings?

8 A I have no idea.

9 Q You never -- you never reviewed the filings at
10 all?

11 A No.

12 Q But in any event were you generally aware that
13 during the period let's say December '94 through April '95,
14 that Liberty was adding buildings to its list of customers
15 and was making filings with the FCC to serve those
16 buildings?

17 A Yes.

18 Q And -- and were you generally aware from your
19 participating in the weekly meetings that during the period
20 January of April of 1995 that Liberty was activating new
21 buildings?

22 A I don't recall specifically, but if we were, we
23 were.

24 Q You -- Do you recall receiving something called an
25 installation progress report from those meetings with Mr.

1 Ontiveros?

2 A Yeah.

3 Q And you recall the progress report indicates what
4 buildings are being installed and what buildings have been
5 installed?

6 A Yes.

7 Q And do you -- you looked at that report did you
8 not?

9 A We look at it weekly.

10 Q Yeah. So if the report indicated that a
11 particular building was being installed on let's say March
12 15th hypothetically.

13 A Right.

14 Q You'd probably be aware of that?

15 A I mean if it was part of the general information
16 that was in the meeting.

17 Q Right. But I take it from your answers before
18 that -- that at no instance during the first four months of
19 1995 when you and Mr. Price and your brother, Mr. Wilson,
20 and Mr. Ontiveros were sitting at these meetings, nobody
21 ever said anything about an FCC licensing problem having any
22 effect on the continued activation of new buildings?

23 A I don't recall them saying anything, but you know,
24 if they said, you know, we don't have a license because it's
25 been delayed, that would just be a comment that was said and

1 whenever they got the license we would assume they'd turn on
2 the service.

3 Q Do you remember any such comments being said,
4 though?

5 A Specifically, no.

6 Q All right. Now you said in your direct testimony
7 that -- that Peter Price was the one who told you that
8 Liberty was running paths without licenses?

9 A I think so, yes.

10 Q All right. And that was later confirmed by
11 investigation?

12 A All right. Do you recall when Peter Price told
13 you this information? Was it the time of Exhibit 35, the
14 April 26th memorandum?

15 A Do I remember the exact time, no.

16 Q And do you know whether or not it was before or
17 after that memorandum?

18 A I do not know.

19 Q And I'll ask you that same question with respect
20 to Exhibit 34 which is the April 28th memorandum. Do you
21 remember?

22 A No I don't recall the exact date.

23 Q Was it around the time of -- of the matters being
24 discussed in these two memorandums?

25 A It was around the time of the emission designator,

1 yes.

2 Q Okay but that's as close in time as you can
3 pinpoint it?

4 A Yes.

5 Q All right. How much time passed between when Mr.
6 Price told you that there was at least a possibility that
7 the company was running unlicensed, in your mind at least,
8 that possibility was confirmed as a certainty by the
9 investigation?

10 A I don't know. Within a week I'd say.

11 Q Were you involved in any discussion with anyone
12 regarding STA requests that are mentioned at Exhibit 35?

13 A No.

14 Q Now it's been established that STA requests for a
15 number of these paths were filed by Liberty on May 4th 1995.
16 Now were you involved at all in any of the events that lead
17 up to the filing of those requests?

18 A No, I don't recall that filing.

19 Q All right. Then you don't recall being part of a
20 discussion with lawyers, Mr. Price, Howard Milstein on that
21 subject?

22 A No.

23 Q Were you involved in personally soliciting the
24 managers or owners of -- in the apartment buildings for
25 Liberty's service in the -- let's say the last quarter of

1 '94, first quarter of '95?

2 A I know all the owners of real estate in New York
3 City. I was a member of the Real Estate Board of New York
4 which is the largest organization of owners in the city.
5 And I talk to owners regularly.

6 Q But do you recall being particularly involved with
7 -- with any one building that Liberty signed up during that
8 period?

9 A No, not particularly.

10 Q For example, were you involved with the -- with
11 the General Motors building which was signed up during that
12 period?

13 A No. That's not -- that's not an owner as -- an
14 individual owner in New York City. I think it's owned by
15 pension fund.

16 Q Okay.

17 A So I had no -- I had no relationship with pension
18 funds.

19 Q I'd like you to take a look at the list of
20 buildings that's attached to Exhibit 34. Third page of the
21 Exhibit. And if you would just look down the list of the
22 buildings under the column that's headed Path Name. And
23 tell us if you recognize any of those buildings as being
24 buildings where you know the owner.

25 A 441 East 92nd Street. Just the 92nd Street one.

1 Q Were you involved in establishing the business
2 relationship between the owners of that building and Liberty
3 -- in connection with Liberty's cable service?

4 A Originally, no. I think Peter did as a matter of
5 fact.

6 Q Did you become involved with the owners of that
7 building in connection with Liberty's cable service after
8 Peter Price did the initial contract?

9 A Yes. Yes. That was not the initial contract with
10 that owner.

11 Q Okay I'm sorry.

12 A There was a previous building that was installed
13 for that owner.

14 Q All right. When did you become involved with 441
15 East 92nd?

16 A At some point I don't recall when in the process,
17 but at some point in the process.

18 Q Was this -- was this prior to the actual
19 commencement of service?

20 A Yes, I'm sure I had some discussions with them
21 prior to commencement of service. As a matter of fact, I
22 think I got involved at the time the electric contract was
23 being given out for the installation of it within a building
24 because it was new construction.

25 We had to use a union installer for the wiring at

1 the time. And I handled most of all of the construction my
2 family did in the 80s. We built 5,000 apartments. I was
3 involved in all the construction. If it was a heavy
4 construction issue, I usually got involved.

5 Q Now did you know -- did -- well strike that. If -
6 - with respect to that particular building then, did you
7 know, because you were involved with that building, when it
8 was that service was commenced there?

9 A No.

10 Q So your involvement had to do with the
11 construction and after that was done and you were not
12 involved with anything?

13 A No I do recall after that we were having some
14 problems marketing in the building and one of my marketing
15 people came to me and said "we're not being treated
16 correctly". And I had to make a call to the owner of the
17 building to say, you know, what's going on, why aren't we
18 being treated correctly?

19 Q Well now if you were marketing in the building,
20 don't you normally start doing that only after you have a
21 microwave path in place to feed the signals of the buildings
22 so that --

23 A At the time yeah. The signal was -- was going
24 into the building. But I don't know that I knew when it had
25 been activated.

1 Q Right, okay.

2 A It was some time previous. And I got a call some
3 weeks later and said, you know, whatever it is we're not
4 getting the right responses or we're not getting telephone
5 calls or whatever it was and can I do something for them.

6 Q Now this is going back to Exhibit 35. That's the
7 April 26th memorandum from Behrooz Nourain.

8 (Continued on next page.)

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1 Q (Cont'd.) You'll notice here that about
2 three-quarters of the way down the first page, 441 East 92nd
3 Street is listed as an address?

4 A Yes.

5 Q But I take it that you don't recall whether or not
6 (a) whether you received this memorandum, (b) if you didn't
7 receive it, whether or not you were at all curious about the
8 fact that an address in which you had been involved was on
9 it as being --

10 MR. BEGLEITER: Objection.

11 JUDGE SIPPEL: Sustained.

12 MR. BECKNER: Okay. Withdraw it. Nothing
13 further, Your Honor.

14 JUDGE SIPPEL: Mr. Holt?

15 CROSS EXAMINATION

16 BY MR. HOLT:

17 Q Mr. Milstein, good morning. My name is
18 Christopher Holt. I'm counsel for Cablevision of New York
19 City, Phase I. I'm curious to know, you testified during
20 direct examination that you believe that the issue of the
21 emission designator problem first came up during a meeting
22 with Mr. Ontiveros?

23 A Yes.

24 Q Would that have been one of the weekly meetings
25 that you attended with him?

1 A I think so. He may have walked in and talked to
2 me about it, but most likely it was one of the weekly
3 meetings.

4 Q Was the subject of FCC licensing an issue that was
5 discussed at these weekly meetings?

6 A Not regularly, no.

7 Q Well, what if anything leads you to believe that
8 Mr. Ontiveros raised the issue during one of these meetings?

9 A Because if I ask for the information, I received
10 it from Behrooz, that's the only reason I would get a memo.

11 Q But I want to focus on why you believe that the
12 issue came up during one of the weekly meetings?

13 A Because that's generally my only contact with --

14 Q So you don't have a specific recollection of him
15 raising the issue at one of the meetings?

16 A I remember, I remember hearing about it and he's
17 the only person who could tell me about it. There is nobody
18 else on our staff who would have told me there was an
19 emission designator problem.

20 Q Mr. Nourain could have told you about an emission
21 designator problem.

22 A Not directly. He did not have conversations with
23 me where he called and just said, you know, by the way,
24 this. I would talk to Behrooz twice a year. It was only
25 when I called him.

1 Q But you have a specific recollection of calling
2 Behrooz and asking him for the list of --

3 A Vaguely. I mean, I've also been refreshed by a
4 document that says, you know, that he sent me. I vaguely
5 recall that the document was delayed and I wanted to know
6 what the problem was.

7 Q Do you recall how long the delay was that you --

8 A No, a day or two.

9 Q So you called Mr. Nourain because you're concerned
10 about a delay and yet you say you didn't read the document
11 when you received it?

12 A No, I wanted to know what the extent of it was, if
13 this was an issue of 100 licenses. I wanted to know what it
14 was. His answer to me was, well, I'll send you some
15 information and he sent it to me. When I got it, I gave it
16 to Peter who was -- who handles licenses.

17 Q So the issue of the extent of the involvement was
18 not discussed at the meeting when Mr. Ontiveros raised the
19 issue?

20 A No, not that I recall.

21 Q He just came to you out of the blue and said we've
22 got a problem without giving you any idea what the extent --

23 A I think what happened was we had a staff meeting.
24 My marketing department was working. Tony said that, you
25 know, we have a problem with some licenses being delayed